

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kazmierski et al.	§	Group Art Unit: 1711
	§	
Serial No. 09/976,366	§	
	§	
Filed: October 12, 2001	§	Examiner: Morton Foelak
	§	
For: Mechanically Frothed and	§	
Chemically Blown Polyure-	§	
thane Foam	§	Attorney Docket: DD 42741D

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION OF 4 DECEMBER 2003**

This communication is in response to the Office Action of 4 December 2003, the period of time with which to respond having been extended to expire April 4, 2004.

**REMARKS**

Claims in the Application. Claims 1-16 are active in this application.

Examiner's Rejection of the Claims Under 35 U.S.C. § 101. The Examiner has rejected Claims 1-16 under 35 U.S.C § 101 as claiming the same invention as that of:

- (i.) Claim 1 of provisional Pat. Nos. US 2003/0045594 (*"the '594 Publication"*);
- (ii.) Claims 9-21 of provisional Pat No. US 2001/0000252 (*"the '252 Publication"*); or
- (iii.) Claims 1-23 of U.S. Patent No. 6,372,810 (*"Kazmierski"*).

This ground for rejection is traversed.

*The '594 Publication* is a printed publication of the instant application. Note both *the '594 Publication* and the instant application claim entitlement to U.S. serial no. 09/976,366.

*The '252 Publication* is a printed publication of *Kazmierski*. Note both *the '252 Publication* and *Kazmierski* claim entitlement to U.S. serial no. 09/730,153. Thus, *the '252 Publication* is not a "provisional" patent but is merely an earlier publication of the application which matured into *Kazmierski*.

The Examiner's double patenting rejection under 35 U.S.C. § 101 over *Kazmierski* is improper. The claims of *Kazmierski* are *process* claims (Claims 1-12 and 21-23) and *product-by-process* claims (Claims 13-20). Applicants' claims are *composition* claims. Claims to a composition are *not* directed to the "same invention" as claims directed to process or product-by-process. The Examiner is therefore respectfully requested to reconsider the rejection.

Examiner's Rejection of the Claims Under the Judicially Created Doctrine of Double Patenting.

The Examiner has further rejected Claims 1-16 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over:

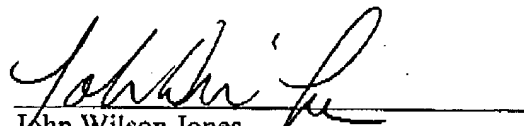
- (i.) Claim 1 of provisional Pat. Nos. US 2003/0045594 (*"the '594 Publication"*);
- (ii.) Claims 9-21 of provisional Pat No. US 2001/0000252 (*"the '252 Publication"*); or
- (iii.) Claims 1-23 of U.S. Patent No. 6,372,810 (*"Kazmierski"*).

This ground for rejection is traversed for reasons provided in the paragraphs above. Applicants nevertheless respectfully request the Examiner to consider the accompanying Terminal Disclaimer in his reconsideration of this rejection.

Respectfully submitted,

Date: 4/5/04

April 5, 2004

  
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